

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN ASSEMBLY JUNE 13, 2011

AMENDED IN SENATE APRIL 13, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 798

Introduced by Senator De León

February 18, 2011

An act to ~~amend Section 16700 of the Penal Code,~~ *repeal Section 53071.5 of the Government Code,* relating to *imitation* firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 798, as amended, De León. ~~Firearms~~—BB devices: imitation firearms.

Existing law provides that the Legislature occupies the whole field of regulation of the manufacture, sale, or possession of imitation firearms, as defined, and that those provisions shall preempt and be exclusive of all regulations relating to the manufacture, sale, or possession of imitation firearms, including regulations governing the manufacture, sale, or possession of BB devices and air rifles, as specified.

This bill would repeal those provisions.

Existing law defines “BB device” to mean any instrument that expels a projectile, such as a BB or a pellet, through the force of air pressure, gas pressure, or spring action, or any spot marker gun. Existing law defines “imitation firearm” to mean any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm but provides that a BB

device is not an imitation firearm in regard to a provision imposing a civil fine on the sale, manufacture, transportation, receipt, or distribution of imitation firearms for commercial purposes.

This bill would make the provision imposing a civil fine on the sale, manufacture, transportation, receipt, or distribution of imitation firearms for commercial purposes applicable to BB devices.

The bill would also provide that a spot marker gun that expels a projectile of greater than 10 mm caliber would not be an imitation firearm in regard to the provision imposing a civil fine on the sale, manufacture, transportation, receipt, or distribution of imitation firearms for commercial purposes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 53071.5 of the Government Code, as
2 amended by Section 1 of Chapter 607 of the Statutes of 2004, is
3 repealed.

4 53071.5.— By the enforcement of this section, the Legislature
5 occupies the whole field of regulation of the manufacture, sale, or
6 possession of imitation firearms, as defined in Section 12550 of
7 the Penal Code, and that section shall preempt and be exclusive
8 of all regulations relating to the manufacture, sale, or possession
9 of imitation firearms, including regulations governing the
10 manufacture, sale, or possession of BB devices and air rifles
11 described in subdivision (g) of Section 12001 of the Penal Code.

12 SEC. 2. Section 53071.5 of the Government Code, as amended
13 by Section 35 of Chapter 178 of the Statutes of 2010, is repealed.

14 53071.5.— By the enforcement of this section, the Legislature
15 occupies the whole field of regulation of the manufacture, sale, or
16 possession of imitation firearms, as defined in subdivision (a) of
17 Section 16700 of the Penal Code, and that section shall preempt
18 and be exclusive of all regulations relating to the manufacture,
19 sale, or possession of imitation firearms, including regulations
20 governing the manufacture, sale, or possession of BB devices and
21 air rifles described in Section 16250 of the Penal Code.

22 SECTION 1. Section 16700 of the Penal Code is amended to
23 read:

1 16700. (a) As used in this part, “imitation firearm” means any
2 BB device, toy gun, replica of a firearm, or other device that is so
3 substantially similar in coloration and overall appearance to an
4 existing firearm as to lead a reasonable person to perceive that the
5 device is a firearm.
6 (b) As used in Section 20165, “imitation firearm” does not
7 include any of the following:
8 (1) A nonfiring collector’s replica that is historically significant,
9 and is offered for sale in conjunction with a wall plaque or
10 presentation case.
11 (2) A spot marker gun which expels a projectile that is greater
12 than 10 mm caliber.
13 (3) A device where the entire exterior surface of the device is
14 white, bright red, bright orange, bright yellow, bright green, bright
15 blue, bright pink, or bright purple, either singly or as the
16 predominant color in combination with other colors in any pattern,
17 as provided by federal regulations governing imitation firearms;
18 or where the entire device is constructed of transparent or
19 translucent materials which permits unmistakable observation of
20 the device’s complete contents, as provided by federal regulations
21 governing imitation firearms.